IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8501 OF 2004.

Shikshan Prasarak Mandal & others. ... Petitioners
Versus.
Avinash Sudam Gosavi & another. ... Respondents.

Shri Uday P.Warunjikar for the Petitioners.

Shri Dilip Bodake for the Respondent No.1.

CORAM : ABHAY S. OKA, J.

DATED : 20th JANUARY, 2006.

P.C.:

1. Heard the learned Counsel appearing for the parties.

2. Rule. The learned Advocate for the Respondent No.1 waives service. Considering the facts and circumstances of the case taken up for hearing forthwith. The Respondent No.2 being a formal party, service of Rule on the Respondent No.2 is dispensed with.

3. The challenge in this Petition under Article 227 of the Constitution of India is to the Judgment and order dated 31st August 2004 passed by the learned Presiding Officer of the School Tribunal at Pune by which the Appeal preferred by the Respondent No.1 has been allowed. The contention of the Petitioners is that though there was a reply to the Appeal filed on record

which was signed by the Petitioner No.2, the learned Member of the Tribunal has proceeded with the hearing of the Appeal on erroneous assumption that the averments made in the Appeal have gone unchallenged as the Petitioner No.1 has not signed the reply. Placing reliance on the document at page 38 which is the alleged School Leaving Certificate of the Respondent No.1, the learned Advocate for the Petitioners submitted that the Respondent No.1 could not be in the employment of the Petitioner No.1 in the year 1992-93.

4. The learned Advocate for the Respondent No.1 pointed out that the delay in preferring the appeal was condoned by the Tribunal by order dated 6th June 2003 and there was ample opportunity available to the Petitioner No.1 to file a reply. He invited my attention to the averments made in the petition to the effect that the reply filed by the Petitioner No.2 is a formal reply. He submitted that the alleged School Leaving Certificate relied upon by the Petitioners in this petition was never placed before the School Tribunal. He submitted that no interference is called for.

5. I have considered rival submissions. A true copy of the reply which was filed before the Tribunal is placed on record. Though the reply is signed by the Petitioner no.2 it is admittedly filed on behalf of both

the Petitioners. A perusal of the reply shows that apart from the contention regarding the bar of limitation, various contentions have been raised with reference to the averments made in the Memorandum of Appeal. In paragraph 3 of the reply, it is denied that the Respondent No.1 was appointed in the year 1992-93. A perusal of the reply shows that there is a contest on merits of the appeal at least on behalf of the Petitioner No.2 who is the Headmaster of the School where the Respondent No.1 was allegedly employed.

6. A perusal of paragraph 8 of the impugned Judgment and Order shows that the learned Member of the Tribunal proceeded to decide the appeal on erroneous assumption that the averments in the Appeal as against the Petitioner No.1 have gone unchallenged as reply is signed only by the Petitioner No.2. Though the reply is signed by only the Petitioer No.2 it is filed also on behalf of the Petitioner No.1. A perusal of the judgment and in particular paragraph 10 thereof shows that the merits of the case are not considered by the learned Member satisfactorily. Moreover there is a document annexed to the petition which, if found to be genuine, may have a bearing on the outcome of the Appeal. The learned Advocate for the Petitioner pointed out that the Petitioners have other material which they wish to produce before the Tribunal.

7. In view of what is stated above, a case is made out for setting aside the impugned order and for remanding the Appeal for a fresh hearing. As the Petitioners desire to produce additional material and as there is some default on the part of the Petitioners, the Respondent No.1 will have to be compensated by ordering payment of costs. The learned Advocates appearing for the parties have not disputed the fact that the impugned order has not been implemented as of today. The amount of costs are quantified at Rs.7500/-.

8. Hence the following order is passed:

(a) The impugned order dated 31st August 2004 is quashed and set aside and the Appeal No.72 of 2000 is restored to file, subject to the Petitioners paying costs of Rs.7500/- to the Respondent No.1 within a period of six weeks from today. If the amount of costs is not paid to the Respondent No.1 within the stipulated period, the Writ Petition will stand dismissed and the impugned order will stand confirmed.

(b) If compliance is made by the Petitioners within the stipulated time, the parties will appear before the learned Member of the School Tribunal on 27th March 2006 for fixing

a schedule of hearing. It is made clear that the Petitioners will file their additional reply along with all the documents within a period of four weeks from 27th March 2006 and no further time will be granted to the Petitioners by the Tribunal.

(c) The Tribunal will endeavour to decide the Appeal as expeditiously as possible and preferably on or before 31st August 2006.

(d) All contentions of the parties on merits are kept open,

(e) Rule is accordingly made absolute in the above terms.

(f) The parties and the Tribunal to act on an authenticated copy of this order.

Judge.